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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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09/527,620 03/17/00 JORGENSEN

R 56672.000003

EXAMINER

001444 HM12/0628
BROWDY AND NEIMARK, P.L.L.C.
624 NINTH STREET, NW
SUITE 300
WASHINGTON DC 20001-5303

PART UNIT: N	PAPER NUMBER
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1616

DATE MAILED:

06/28/01

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 5/3/01

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 30 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-29 is/are pending in the application.
Of the above, claim(s) 1-13, 20-22, 26 & 27 is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☒ Claim(s) 14-19, 23-25, 28 & 29 is/are rejected.
☐ Claim(s) _____ is/are objected to.
☒ Claim(s) 1-29 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☒ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 25
☐ Interview Summary, PTO-413
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

BEST AVAILABLE COPY

Art Unit: 1616

Receipt is acknowledged of Request for Restart, election and amendment, of 4/23, 5/23 and 5/3/2001; respectively.

Examiner has no authority to adjust time under circumstances as presented in request for restart.

Applicant's election with traverse of Group II, a composition with species A calcium binding compounds, zeolites, and pellets as dosage form in Paper No. II is acknowledged. The traversal is on the ground(s) that the restriction is on the basis that the generic claims are allowable. This is not found persuasive because there has been no examination; no indication of allowability; the restriction is appropriate, as different issues and search is required; different searches is required; different searches are required for the various species, also.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-13, 20-22, 26, 27 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions and species--competitive, non-pellet, and non-zeolite binders, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 11.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14-19, 23-25, 28 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"Suitable" is indefinite, as is "derivative" and "such as". The language is confusing "peroral" suggests active administration: thus, the animal is individually given a composition, orally, which, when it afterward eats or drinks, reduces ca absorption. It is unclear whether or not orthophosphate in claim 24, the "membrane material" is insufficiently characterized to specifically identify the invention.

Claims 14-19, 23-25, 28 and 29 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. One of ordinary skill in the art would not know how to provide the composition, as it is claimed. Suitability for function independently administered from feed or water would not be clearly enabled in accord with the dependent claim language, if one considers the purpose for which the composition is provided--further description of the composition, with ratios and concentrations, should be claimed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 14-19, 23-25, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Schaumann-DE 1255466.

Here is the instant composition as claimed--see examples--it is suitable for peroral administration; and as it has the instant ingredients, it will perform as the instant composition does.

Claims 14-19, 23-25, 28 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Huzinec et al 5912030.

Here too, peroral administration of zeolite, (col. 2) with vitamins and membrane encapsulants--guar gum, useful with or without food or liquid drinks, with water. Added fats, glycols are disclosed (col. 4, top). The compound may be in pellet form, as it is of .1 to 100 microns (col. 1, bottom, col. 2, top). Inherently the same composition has the characteristics of the instant composition no patentable weight given to function in hypocalcemia.

Claims 14-18, 23-25, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Ashmear et al 3184381.

See examples, col. 1--the instant inventive composition, able to chelate Ca (col. 2, lines 14-30) including elimination of calcium phosphate--(feed minerals). Dosages forms are capsules

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absent any descriptive features, equivalent to pellets of the instant species (col. 3, lines 525-581, with vitamins (line 65, 66).

Claims 14, 16-19, 23, 25, 28, 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Shinkyo-JP 63056255.

See abstract.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday-Friday from 7 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy:mv

June 21, 2001



NEIL S. LEVY
PRIMARY EXAMINER